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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/493,750	01/28/2000	Purnendu Shekhar Ojha	NEXTAG-00308	2623
28960                      7590                      10/27/2008 HAVERSTOCK & OWENS LLP 162 N WOLFE ROAD SUNNYVALE, CA 94086				
EXAMINER				
POND, ROBERT M				
ART UNIT		PAPER NUMBER		
3625				
MAIL DATE		DELIVERY MODE		
10/27/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/493,750

**Applicant(s)**

OJHA ET AL.

**Examiner**

Robert M. Pond

**Art Unit**

3625

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on Amdt (7/30/08); IDS (8/18/08).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4 and 6-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-22, 25-33 and 35 is/are rejected.
- 7) ☒ Claim(s) 23, 24 and 34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/18/08; 9/29/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

The Examiner is formally noting the priority date that the Applicants can receive benefit from an earlier filing. Claimed subject matter in independent claims 1, 25-27 and 27 was introduced in provisional application #60/157,552 filed 04 October 1999 rendering claims 1, 25-27 and 27 as receiving an effective priority date of 04 October 1999.

### ***Response to Amendment***

All pending claims 1, 4 and 6-35 were examined in this final office action necessitated by amendment.

### ***Response to Arguments***

Applicant's arguments filed 15 February 2008 have been fully considered but they are not persuasive. The Examiner is clarifying first, second, third and fourth parties as disclosed by Walker US 6,754,636 in light of the Applicants' definitions of first, second, third and fourth parties resulting in new grounds of rejection in response to the RCE. Clarification of Walker US 6,754,636 is based on Figure 1B and supporting disclosures as noted below:

- Applicants' first party: Walker's buyer
- Applicants' second party: Walker's retailer

- Applicants' third party: Walker's one or more sellers (being different entities than a retailer), manufacturers, distributors, purchasing system or a retailer (active as a seller)
- Applicants' fourth party: Walker's second group of sellers, a credit card company

Regarding arguments pertaining to "dynamically facilitate consummation"

As cited below, interaction with one or more sellers (third parties) by Walker's purchasing system is dynamic. The purchasing system routes an offer to a seller (third party) and routes to the seller subsidy information (such as routing the minimum subsidy amount that the settlement system will require if the seller accepts the buyer's (first party) offer. The seller sends subsidy information to the purchasing system when attempting to accept a buyer's offer in an attempt to be selected by the purchasing system device. See at least col. 13, lines 60-67. This disclosure is describing an interaction that occurs on a per offer basis. Give the different examples cited by Walker subsidies amounts vary. The Applicants' specification discloses parties other than the buyer and seller (Walker's retailer) to be manufacturers and distributors.

Regarding "any interested party"

The Applicants' instant specification identifies interested third parties as the i) site operator (Walker's purchasing system), ii) manufacturers (Walker's third party sellers) and iii) distributors (Walker's third party sellers).

Regarding newly amended subject matter to all independent claims

Applicant's arguments, see Remarks, filed 30 July 2008, with respect to the rejection(s) of claim(s) 1, 4, 6-22, 25-33 and 35 under 35 USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Walker under 35 USC 103(a) as necessitated by amendment. Please see below for response to argument.

The Examiner is suggesting the Applicants consider a telephone interview for subject matter discussion and prosecution direction.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**1. Claims 1, 4, 6, 7, 11-22, 25-29, 32 and 33 are rejected under 35 USC 103(a) as being unpatentable over Walker (US 6,754,636).**

Walker teaches a remote purchasing system and methods that allow a buyer (a first party) to submit a desired bid price for a product sold by one or more retailers (second party) and compare prices and further factors retailer, manufacturer and/or purchasing system subsidies to consummate the deal. Based on the buyer offer information, the purchasing system selects a particular product from a plurality of possible products from a plurality of sellers (i.e. third parties) or presents products from one or more sellers (third parties) that meet

the buyer's criteria (see at least abstract; Fig. 1B; col. 7, lines 32-47. Walker further teaches:

- Regarding claim 1. providing a first ask price for a particular product to a first party, wherein the first ask price is associated with and specified by a particular second party; examples of a first ask price specified by second party exposed to a first party. See at least col. 2, lines 6-16.
- Regarding claim 1. enabling the first party to submit a first bid price for the particular product of the particular second party in response to receiving the first ask price; Note: receiving a pricing comparison between retailers that reveals retail pricing is used to cause a purchase response. See at least col. 2, lines 6-16. It would have been obvious to try, by one of ordinary skill in the art at time the invention was made, to reveal retail pricing to initiate a first party (i.e. buyer) response by Walker and incorporate it into the system of Walker since there are a finite number of identified, predictable potential solutions to the recognized need and one of ordinary skill in the art could have pursued the known potential solutions with a reasonable expectation of success. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. vs. Teleflex Inc.*

Walker further teaches and suggests:

- Regarding claim 1. providing information relating to a transaction between a first party (buyer) and a second party (retailer) to a third

party (seller) via the wide area network, the information including a first bid price associated with the first party and a first ask price associated with the second party; the buyer (a first party) sends an offer to purchase a camera for \$150 (a first bid price). The purchasing system and/or seller devices (third parties) determine that cameras produced by two different manufacturers can be used to fulfill the buyer's offer. Both cameras are available at a retailer (a second party) for the same settlement price of \$175 (asking price). See at least col. 7, lines 32-54. Note: seller (third party) is a different entity than the retailer (second entity) being a seller, manufacturer, distributor. See at least col. 1, lines 61-64; col. 8, lines 12-14.

- Regarding claim 1. and enabling the third party to dynamically facilitate consummation of the transaction between the first and second parties by transmitting a counteroffer or an acceptance from the third party via the wide area network after receiving the first bid price and the first ask price and enabling the third party to cover at least part of a first difference between the first bid price and the first ask price, the purchasing system routes an offer to a seller (third party) and routes to the seller subsidy information (such as routing the minimum subsidy amount that the settlement system will require if the seller accepts the buyer's (first party) offer. Seller sends subsidy information to the purchasing system when attempting to accept a buyer's offer in an

attempt to be selected by the purchasing system device. See at least col. 13, lines 60-67. Please note that Walker is disclosing a dynamic interaction between the purchasing system and the seller given the minimum subsidy amount is dependent on a given offer. As noted above, Walker's system is giving the seller the opportunity to cover at least the difference.

wherein the wide area network is configured to allow any interested entity to participate in the transaction as the third party. More than one seller can participate and respond to an offer using computers connected via the Internet to the purchasing system. See at least col. 14, lines 1-5.

- Regarding claims 25-27. Rejections are based on disclosures as noted above.
- Regarding claim 32. Rejection of claim 32 is based disclosures noted above and further includes: individual and system transaction history. Maintains transaction history for each buyer. Prices available to a buyer through the purchasing system vary based on the buyer (e.g., the buyer's transactional history with the purchasing system device 310) or the buyer's location (e.g., based on a telephone number area code or the buyer's home address ZIP code). For example, the settlement price may be based on the number of transactions previously completed by the buyer with the purchasing system (e.g., if



the buyer previously completed no transactions the minimum selling price is \$200, if the buyer previously completed one transaction the minimum price is \$195, and so on). A "complete" transaction may comprise, for example: (i) submitting an offer to the purchasing system device 310; (ii) having an offer accepted by the purchasing system device 310; or (iii) redeeming a voucher at a retailer. See at least col. 37, lines 15-30.

- Regarding claim 4. notifying the second party of the counteroffer transmitted to the first party: seller (i.e. retailer in non-passive role) receives offers from the purchasing system and communications offer acceptances/rejections. First party and second party who eventually accept an offer are notified (see at least col. 14, lines 16-26).
- Regarding claim 6. notifying the second party of the acceptance transmitted to the first party: seller (i.e. retailer in non-passive role) receives offers from the purchasing system and communications offer acceptances/rejections. First party and second party who eventually accept an offer are notified (see at least col. 14, lines 16-26).
- Regarding claim 7. dynamic interactions between seller and purchasing system occurs in a web-base communication environment. Implies web pages being served to remotely connected computers.
- Regarding claim 11. filtering bids: purchasing system applies business rules to filter bids based on at least one criterion (e.g. location of buyer)

See at least col. 7, line 62-col. 8, line 3. Each potential seller determines whether or not to fulfill a particular buyer's offer, for example: with an automated rules-based program to evaluate incoming buyer offers. See at least col. 13, lines 50-53.

- Regarding claim 12, second bid/second ask price: counteroffer scenarios. See at least col. 32, lines 22-42.
- Regarding claims 13, 14, 16-19, third party and second party business rules. The seller device 510 communicates with the purchasing system device 310 using the communication port 540 to send information to be added to the product database 900. The information may include, for example: (i) what products the seller wants sold through the purchasing system; (ii) the settlement price that the seller is willing to accept for each of the products (if the seller is the retailer); (iii) in one embodiment, the quantity of a product that is available for sale through the purchasing system and/or the region in which the product or quantity of the product is available; and (iv) a minimum acceptable price (e.g., when the seller is a product manufacturer). The seller device 510 may receive such data from the seller's personnel via the input device 542. Alternatively, the seller device 510 may, based on a program or subroutine, determine: (i) what products to offer for sale through the purchasing system; (ii) the settlement prices for those products; and (iii) the quantity and regions of availability of the

products. The seller device 510 may make such a determination based on, for example, the seller's current inventory and revenue management rules or predetermined rules input by the seller's personnel. See at least col. 14, lines 38-58. Seller acceptances/rejections. See at least col. 13, lines 54-55. Counteroffer scenarios. See at least col. 32, lines 22-42. Second party business rules. Implies rules that apply to seller as a third party apply to retailer in seller role as a second party. See at least col. 5, lines 45-53. other business rule before the at least one business rule. Multiple rules imply this condition.

- Regarding claim 15. at least one of an identifier. product identifier. See at least col. 18, lines 51-66.
- Regarding claim 20. predetermined time before implementing at least on rule. Buyer violation a rule, e.g. geographic limitation or expiration date. See at least col. 8, lines 41-50
- Regarding claims 21 and 22. fourth party cover remaining portion. Credit card company contributes \$50 towards purchase of a home stereo if buyer submits a credit card application. See at least col. 8, lines 22-25. second group of sellers. See at least col. 14, lines 5-8.
- Rejections of claims 28, 29. Rejections are based on disclosures as noted above.

- Regarding claim 33. geographical format. Taking into account location of the buyer (first party) and seller (second or third parties). See at least col. 7, lines 62-66. Seller provides one or more geographical regions where a product will be available through the purchasing system device. For example, a seller may offer a limited number of a particular type of television at a reduced price in Connecticut because sales have been lower than expected in that area--but fine in the rest of the country. Similarly, a national retailer may want to offer a product for sale at a reduced price in all Florida stores. This function may also be performed using zip codes (or any other indication of geographical area) and/or, for example, a known Geographic Information Systems (GIS) software application such as the GeoMedia Web Map application available from Intergraph Corporation, Huntsville, Ala. See at least col. 19, lines 15-27.

**2. Claims 8-10, 30 and 31 are rejected under 35 USC 103(a) as being unpatentable over Walker (US 6,754,636) in view of Chelliah (US 5,710,887).**

Walker teaches and suggests all the above as noted under the 103(a) rejection and further teaches and suggests i) dynamic interaction with a web-based purchasing system among first, second, third and fourth parties and ii) the dynamic interaction comprising offers, counteroffers and acceptances and application of subsidies. Although Walker does not mention specifics of use of

active objects and buttons to convey interactions, Chelliah on the other hand teaches a system and method of a buyer interacting with multiple storefronts by accessing a remote central electronic mall server using a web browser. Chelliah teaches various business rules used to provide subsidies to customers to facilitate sales, a third-party monitoring the buyer's activity on a seller's electronic storefront using a web-based dashboard application, and teaches the third-party offering subsidies (i.e. incentives) to increase sales for the electronic store front. Chelliah further teaches using active objects such as icons, buttons, and links for selection purposes (see at least col. 6, lines 37-44; col. 23, line 48 through col. 24, line 42). One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Chelliah to use active objects, buttons, icons and links would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Chelliah to the teachings of Walker would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

- 3. Claim 35 is rejected under 35 USC 103(a) as being unpatentable over Walker (US 6,754,636) in view of Lockwood (US 5,576,951).**

Walker teaches and suggests all the above as noted under the 103(a) rejection and further teaches and suggests implementing credit mechanisms and authorizations due to concerns regarding unscrupulous buyers. See at least col. 26, lines 30-63. Although Walker does not mention automatic generation of a value indicative of a specific buyer's reputation, Lockwood on the other hand teaches a retail system in reliance upon a credit rating service which maintains financial files of consumers based on past and current loan payment obligations and automatically making the credit rating information available to merchants. See at least abstract; col. 12, line 38-col. 13, line 20. One of ordinary skill in the art at time the invention was made would have recognized that applying the known techniques of Lockwood to use a value indicative of a buyer's reputation would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the techniques of Lockwood to the teachings of Walker would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such data processing features into similar systems. Obviousness under 35 USC 103 in view of the Supreme Court decision *KSR International Co. v. Teleflex Inc.*

***Allowable Subject Matter***

Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations

of the base claim and any intervening claims. Subject matter introduced in claim 23 was disclosed in provisional application 60/117118 filed 25 January 1999; however, claim 23 dependent on claim 1 is entitled to the filing date of claim 1 based on provisional application 60/157522 filed 04 October 1999.

Claim 24 is objected to as being dependent upon intervening claim 23 dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim 23. Please note. Subject matter in claim 24 without intervening claim 23 is disclosed in Walker. Subject matter introduced in intervening claim 23 was disclosed in provisional application 60/117118 filed 25 January 1999; however, intervening claim 23 dependent on claim 1 is entitled the priority date of claim 1 based on provisional application 60/157522 filed 04 October 1999.

Claim 34 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Subject matter introduced in claim 34 was disclosed in provisional application 60/117118 filed 25 January 1999; however, claim 34 dependent on claim 32 is entitled to the filing date of claim 32 based on provisional application 60/157522 filed 04 October 1999.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert M. Pond/  
Primary Examiner, Art Unit 3625  
October 23, 2008